CC Docket #98-137

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

UNITED STATES TELEPHONE ASSOCIATION FILES)
PETITION FOR FORBEARANCE FROM DEPRECIATION)
REGULATION OF PRICE CAP LOCAL EXCHANGE CARRIERS)

ASD 98-91

COMMENTS OF NEW NETWORKS INSTITUTE

Bruce A. Kushnick
Executive Director
New Networks Institute
826 Broadway, suite 900
New York, NY 10003

212-777-5418

Dated: October 25th, 1998

Do Not Grant the Bells and Other Local Phone Companies, (LECs) Forbearance of Depreciation Expenses. Instead, We Call Upon the FCC to Investigate $21 Billion in Previous Depreciation Write-offs.

On May 11th, 1998, NNI filed a formal complaint with the Criminal Justice Division of the Internal Revenue Service to investigate $20.9 billion dollars of questionable depreciation write-offs by the Regional Bell Operating Companies, and other local phone companies.

Our claims, presented in the attached Complaint, and summarized in our recent FCC filings for the FCC proceedings on Advanced Network Deployments, 98-146, and 98-147, states the following:

In the early 1990's, the Regional Bell Holding Companies and their local phone companies promised to deploy advanced networks, which would deliver very high speed, 500 channel, full-motion video interactive services.

These networks would be based on new fiber-optic wiring, replacing the current copper wiring in use today. By the end of next year, almost HALF of America's households were supposed to have been upgraded.

In exchange for these new services state Public Utility Commissions and state legislatures granted Alternate Regulations that allowed the Bells more profits which would be used to fund these networks. Also, the Bells stated that there was facing competition and that they needed to replace their old business model with this new alternative, giving them more financial freedoms. This change was from a "Rate-of-Return" regulation to "Price Cap" regulation.

Unfortunately, the Bells failed to deliver on their promised deployments or services. Attached is a description of how New Jersey's Alternate Regulation plan, "Opportunity New Jersey", did nothing more than increase Bell Atlantic's profits. Also, today, only 1% of residential customers and businesses use competitive local services. There was virtually NO local competition in 1993-1995.

However, from 1993 to 1995, the Bells took massive, multiple-billion dollar depreciation deductions, $20.9 billion to be exact, writing-off most of the copper wiring — the wiring that is still in place today and still being used.

If there was virtually no replacement of the copper wire, or more importantly, new advanced services that would require this new wiring, and if there was no substantial competition in 1993 to 1995, then these deductions were, at best, premature. However, the copper networks are still in use today, and these deductions, as far as we can tell, were not in the Public Interest, as monopoly phone companies are obligated to do.

Therefore:

- The FCC should NOT grant any new forbearance in depreciation until these issues are investigated.

- The FCC should rule as to the legality of these network deductions and require customer reimbursements and penalities.

- If the deductions were legal then the FCC should consider that the Bells are still charging retail for networks that have already been written off, and therefore, all charges, from the "FCC Subscriber Line Charge" to "Access Fees" should be reassessed

Respectfully submitted,

NEW NETWORKS INSTITUTE

By: ______________________

Bruce A. Kushnick
Executive Director
New Networks Institute
826 Broadway, suite 900
New York, NY 10003

212-777-5418

New Networks Institute

Exploring New Directions In Telecommunications

May 11th, 1998

From: Bruce Kushnick
New Networks Institute
826 Broadway, suite 900
New York, NY 10003

To: Criminal Investigation Division
Internal Revenue Service (IRS)
Holtville, NY 00501

To whom it may concern,

I am requesting an investigation into what may be improper or illegal write-offs of $21 billion dollars by the Regional Bell Operating Companies, (RBOCs) accounting for multiple billions of dollars per-company in underpaid tax payments. This issue may also effect other local phone companies, such as GTE.

The original Bell Operating Companies are:

- Ameritech
- BellSouth
- Southwestern Bell
- US West
- Bell Atlantic
- NYNEX
- Pacific Telesis

The RBOCs, also known as the "Baby Bells", are holding companies which control specific states' local Bell companies — i.e., Ameritech controls a five-state region — Illinois, Indiana, Michigan, Ohio, and Wisconsin. (Attached is a list of the states each holding company controls.) Also, in 1997, Bell Atlantic purchased NYNEX, while Southwestern Bell purchased Pacific Telesis, and changed its name to SBC Communications.

The Details:

Starting in the early 1990's, the Regional Bell Operating Companies applied for and received, state by state, changes in state regulation. Known commonly as "Alternate Regulations", these new laws replaced the normal, "rate-of return" regulation that is used by utilities that are monopolies. As you know, this former utility regulation controlled profits because the companies have a guaranteed income from their captured audience, the local telephone subscriber, and the companies enjoy a business with virtually no competition to lower prices.

Alternate Regulations were granted to the Bells based on two basic assumptions — promises of massive new technology deployment, as well as new competition from competitors.

First and foremost, the companies were supposed to deploy new technologies and new telephone networks, replacing the older copper wiring, which has been the mainstay of telephone services for decades, with "fiber-optic" wiring. This new form of wire is able to deliver much larger quantities of information, and they were supposed to have 500 channels of everything from movies to home game shows, and all looking better than current cable services. Technology issues aside, this deployment has commonly been called the Fiber-Optic Information SuperHighway.

Based on numerous sources, by 1997 more than 1/4 of America was supposed to be rewired, almost half of America by the year 2000. Bell Atlantic stated that they would be spending $11 billion dollars, while Pacific Telesis promised $16 billion dollars.

Bell Atlantic Annual Report, 1993:

> First, we announced our intention to lead the country in the deployment of the information highway... We will spend $11 billion over the next five years to rapidly build full-service networks capable of providing these services within the Bell Atlantic Region.... We expect Bell Atlantic's enhanced network to serve 8.75 million homes by the end of the year 2000. By the end of 1998, we plan to wire the top 20 markets in our mid-atlantic region.

Pacific Telesis 1994 Annual Report :

> In November 1993, Pacific Bell announced a capital investment plan totaling $16 billion over the next seven years to upgrade core network infrastructure and to begin building California's "Communications Superhighway". This will be an integrated telecommunications, information and entertainment network providing advanced voice, data and video services. Using a combination of fiber optics and coaxial cable, Pacific Bell expects to provide broadband services to more than 1.5 million homes by the end of 1996, 5 million homes by the end of the decade.

However, these new networks were never deployed. Attached is a specific case — "The Case of Opportunity New Jersey". As discussed in the attached text, New Jersey Bell (Bell Atlantic) made more money by inflating prices, (and massive tax savings), but never delivered on the fiber-optic highway. According to filed documents by the New Jersey State Consumer Advocate, of the $1.5 billion dollars that was supposed to have been spent on network upgrades for residential subscribers in that state, only $79 million was used. Simultaneously, New Jersey Bell paid an additional $1 billion in added dividends to the holding company, Bell Atlantic.

In New Jersey, there was also over $1 billion in network write-offs, accruing massive tax savings based on the promised network deployment. (Notice that the New Jersey Advocate did not examine these additional write-offs)

The Write-Offs Happened Across America.

Using these new adjusted state regulations, which promised technology deployment as well as new competition from competitors, the Bells stated that they were now allowed to change their accounting principles, from a regulated monopoly to a "free market" company. Known as FAS 71, the Bells collectively took massive write-offs of their massive copper wiring, almost $21 billion dollars, with varying amounts accounted for in different states.

We included the next exhibit showing the holding companies' write-offs.

RBOC Depreciation Write-Offs, 1993-1995

	Amount	Year
Ameritech	$3,785,000,000	1994
Bell Atlantic	$2,156,000,000	1994
BellSouth	$2,718,000,000	1995
NYNEX	$2,919,000,000	1995
Pac Bell	$3,361,000,000	1995
SBC	$2,819,000,000	1995
US West	$3,123,000,000	1993
TOTAL	$20,881,000,000	

Sources: New Networks, RBOC Annual Reports, 1993-1996

The Reason for the Investigations: <u>We estimate that Federal Tax savings could be over $7 billion dollars.</u>

Since the Bells did not deploy the fiber-optic services, these write-offs, and therefore the massive TAX savings, may have not only been premature, since the copper wiring is still being used today, but also unfairly costing all telephone users more money.

Jurisdictional Issues? The write-offs seem to fall under a number of laws and though the states may be responsible for the intricacies of the state law, I believe that the phone companies may have been able to hide much of their income and therefore not pay the appropriate Federal and state taxes.

Also, the question of timing of the deductions of the copper plant should be in question. Since the plant is still largely in use and totally functional, who would decide the tax liabilities based on the usefulness of the networks that were written off?

Then there is the question of competition and whether these companies should be allowed 'free market' status. All the Bells stated that its changes in Tax status was required because of competitors --- a free market company, by definition, has competitors. However, in the years that these deductions were taken, 1993-1995, the Bell companies did not have competition or competitors.

The Telecommunications Act of 1996 was the national law that was supposed to bring in competitors. However, the parts of the law dedicated to competition, which were designed by the Federal Communications Commission (FCC), has been held-up in court by the Bells. In fact, as of 1998, the Bells had not even finished the "checklist" of technical requirements that would to allow competitors to enter the market on an equal basis.

According to both AT&T and MCI, in 1998 competitors can't make money. AT&T stated "they were losing $3 per customer", and have "stopped marketing local service" (Statement by C Michael Armstrong, President of AT&T, 2/11/98) while MCI's President, Timothy F. Price stated at the National Press Club, (1/22/98) that they "would not offer (resale) service to any new residential customers because... the Bells have managed to ensure that the business is not a profitable one for new entrants, who don't have government protected territories".

Therefore, there was no significant competition in any state, not today and especially not in the 1993-1995 timeframe the Bells took these deductions.

Finally, while the Bells' accounting as detailed in their Annual Reports clearly shows these deductions, I do not have access to their Tax filings. Therefore, I am requesting the IRS to investigate whether these deductions, and therefore the savings on their taxes, was not only improper, but also illegal, since their obligations to deliver and deploy new telephone networks were never fulfilled, and the copper plant is still in use.--- and there still is no substantial competition.

I have included some corroborating information and I will be glad to answer any questions you might have about the material I have sent. If there are other government agencies that should be contacted, please let me know.

I can be reached at the address given at the opening of this letter. My phone number is 718-238-7191. Thank you for your consideration of this material.

Yours truly,

Bruce Kushnick

Chapter 4 Case Study: Opportunity New Jersey— An I-Way Failure

(this material is taken from New Networks Institutes's upcoming report.

Opportunity New Jersey, the first of the Opportunity alternate regulation plans, turned out to be nothing more than an opportunity for Bell Atlantic to make more money. Using this as a case study, we would like to demonstrate how the broken regulatory fabric and the massive Bell lobbying efforts, specifically Bell Atlantic, all worked in conjunction to overcharge customers without serious retribution from the state commission, the advocate's office, or even the state legislature.

Though we will return to all of these topics in future chapters, what happened in New Jersey pretty much sums up the process of regulation nationwide — a failure of the regulators to control Bell profits or monitor Bell's technology deployment promises.

What Happened to the Info Bahn in New Jersey?

According to a brief filed by the New Jersey's consumer advocate (Division of the Ratepayer Advocate) with the New Jersey Board of Regulatory Commissioners (BRC), NJ's state utility commission, on March 21, 1997: (76)

> "Bell Atlantic-New Jersey (BA-NJ) has over-earned, underspent and inequitably deployed advanced telecommunications technology to business customers, while largely neglecting schools and libraries, low-income and residential ratepayers and consumers in Urban Enterprise Zones as well as urban and rural areas."

So much for the promise of the Info Bahn. Before delving into the telecom muck and how the Bell has prospered by not fulfilling promises and thus overcharging customers, let's go back to 1991, when New Jersey Bell presented a new plan created by Deloitte & Touche to move New Jersey into the future.

Background

In March of 1991, the findings of a report written by Deloitte & Touche on behalf of New Jersey Bell were presented to politicians and government regulators, from the Governor on down. Dubbed "Opportunity New Jersey", it stated that New Jersey needed to implement "policies that encourage development of an advanced telecommunication infrastructure." In fact, the study stated, this was essential for New Jersey's future. (77)

> "(fiber optics is) essential for New Jersey to achieve the level of employment and job creation in that state", would "advance the public agenda for excellence in education", and "improve quality of care and cost reduction in the healthcare industry".

And this rhetoric was also repeated by the phone company. For example, Alfred C. Koepee, Vice President of New Jersey Bell, said the plan was New Jersey's future, building new networks to create jobs. (78)

> "You have a choice as a regulator. You can move into the future, or you can put through a 10-cent reduction in somebody's bill. It makes a lot of sense to build the new technology to create new jobs."

According to an article by Rick Linsk titled "All the Right Connections, — New Jersey Bell and the Wiring of a Regulatory Bonanza", from The New Jersey Reporter, the entire series of events that led up to the passage of Opportunity New Jersey by the state legislature and endorsed by the state utility commission, was one of the most masterful lobbying jobs in the state's history. According to Rick Linsk:

> "Above all, though, credit goes to a combination of muscle and merit and to one of the savviest, most complete and aggressive lobbying efforts ever to accompany a public issue in New Jersey. For nearly a year, Bell missionaries had swarmed over the state spreading the gospel of fiber-optics to doctors, teachers, labor leaders, the (Governor) Florio Administration and the Legislature.

> It is now clear, in retrospect, that the hard-sell worked so well, and the connections forged by top-flight influence-peddling ran so deep, that Bell had won long before the first vote was cast.
>
> When the dust had settled, the Bell had spent $640,000 on lobbying, a huge sum by New Jersey standards. For comparisons sake, Bell spent $79,079 the year before." (Note: This figure does not include the Deloitte & Touche study.)

Others, such as Nancy Becker of the New Jersey Cable Association, believed that even the Deloitte & Touche study, at a cost of $1.2 million dollars, was nothing more than a lobbying document. (80)

> "It was basically a lobbying document with the imprimatur of the board (Utility board) on it... It was a million-dollar lobbying document. "

According to Linsk, other critics made it clear that the Board of Regulatory Commissioners, (BRC), specifically Edward Salmon, Chairman, was perceived as "too tight" with the Bell company. (81)

> "Arthur Cooper, president of a pay-phone company that competes with the Bell: This is my opinion, but if everybody in the room was blindfolded, and without being introduced he (Salmon) read his testimony, they would have thought he was not from the BRC; they would've thought he was from Bell."

In May of 1993, the New Jersey Commission officially implemented Opportunity New Jersey.

The Outcome — Opportunity for the Bell

According to the NJ Advocate, the original rate-of-return regulation was replaced by Opportunity New Jersey, an alternate regulation plan based primarily on the promise of "greatly accelerated deployment of advanced technologies...approximately $1.5 billion dollars above current expenditures." (82)

> "The ONJ (Opportunity New Jersey) Plan replaced traditional rate-base/rate of return regulation with an incentive ratemaking system in exchange for a commitment from BA-NJ to greatly accelerate deployment of advanced technologies in its communications network to the entire State by the year 2010 at an estimated additional capital expenditure of approximately $1.5 billion above "business as usual" from 1992 through 1999. Through the incentive of alternative regulation under the ONJ Plan, BA-NJ was given the financial flexibility to operate in the new competitive telecommunications market in exchange for commitments to upgrade the network in order to realize "positive benefits" to the New Jersey economy."

In fact, according to the Advocate, the Bell company only spent $79 million dollars, not the $1.5 billion promised. (83)

> "Although BA-NJ projected that it would expend approximately $1.5 billion in network investment above "business as usual" by the end of 1999...However, the Ratepayer Advocate has calculated that BA-NJ has spent a total of $79 million above "business as usual" over these years."(1992-1995)

More to the point, the actual dollars spent on construction dropped below normal levels. (84)

> "BA-NJ can hardly be characterized as having made capital expenditures beyond "business as usual" during the first three years of ONJ. (1992-1995) Indeed, in constant 1987 dollars, the company's capital expenditures have actually decreased. "

And how has Bell Atlantic prospered from the plan? — Almost one billion dollars of excess profits, and a return of equity almost twice the amount a regulated monopoly should be making. (85)

> "Since the time of the adoption of the ONJ Plan, BA-NJ has received enormous financial benefits, greatly in excess of the Company's original projections. The gains captured by BA-NJ, which probably would not have been achievable but for the Plan, as set forth immediately below, involve earnings, dividends, return on equity, cost of debt and additional benefits."

During this period:

- "BA-NJ paid out an additional $954.8 million in dividends* over what was projected in 1992" (1992-1995)
- "the Company is earning a return on equity in excess of 21%, well above the average New Jersey State utility rate of return (11.25%) and substantially higher than any rate of return authorized by the Board in recent memory."
- "net earnings have increased by $85 million, its cost of debt has declined substantially resulting in an annual savings of $22 million in interest expense."

NOTE: *Dividends, in this case, are the monies that New Jersey Bell paid to Bell Atlantic, the holding company.

The Other Dark Secrets to Opportunity New Jersey

Besides the obvious overcharging of customers, the advocate in two other documents, one discussing the Bell/Atlantic NYNEX merger, the second being the advocate's annual report, (86) clearly showed that Bell Atlantic/New Jersey business practices were filled with problems. They ranged from the company's customer service provisioning, or the price of ISDN service, to low-telephone subscribership due to non-existent low income options.

- **Customer Service Provisioning** — According to the Advocate, numerous customer services, from meeting appointments to even properly answering directory assistance calls, have all had a decrease in the standard measurements of good service. (87)

> "BA-NJ's performance in the following categories was lower in the year ending September 1996 than in 1993, 1994 and 1995:
>
> (1) percentage of service order provisioning completed within 5 working days;
>
> (2) percentage of service order provisioning appointments met; and
>
> (3) percentage of directory assistance calls answered within 10 seconds."
>
> "In addition, the service standards regarding the percentage of BA-NJ customers having no difficulty reaching repair were below the targeted levels in July and September 1996. These standards also dropped from 1995 to the year ending 1996 by approximately 450 to 500 basis points. In addition, the service standard regarding the percentage of service trouble reports cleared within 48 hours experienced a percentage decrease of approximately 480 basis points from 1995 to the year ending September 1996 and this service standard was below the exception and surveillance levels in July 1996 and August 1996. "

- **Lack of Low-Income Options** — New Jersey has had a steady decline in the number of telephone subscribing households, and the advocate believes that this can be attributed, in part, to the fact that the state had not implemented proper low income options. (88)

> "The Ratepayer Advocate has continually pointed to the fact that BA-NJ fails to provide adequate measures to ensure the availability of affordable telephone service for the state's low income consumers.

In 1995, New Jersey was identified as the only state that experienced a statistically significant decrease in residential penetration, and in 1996, New Jersey was only one of three states (plus the District of Columbia) to have experienced a decrease in subscribership.

Although New Jersey's annual average penetration rate rose slightly from 92.3% in 1995 to 93.6% in 1996, the fact still remains that New Jersey has experienced a declining subscribership for the past several years, and that, despite the increase reflected in the most recent monitoring report, we continue to fall below the national average. "

- **ISDN Rates** — According to the Advocate, BA-NJ's ISDN rates are "excessive" and this is stifling deployment of iSDN. (89)

"The Advocate argues that Bell's proposed residential ISDN rates are excessive and will stifle deployment and expansion of this valuable technology...Bell's proposed revised tariff submitted to the Board on April 19, 1996, offers residential ISDN service in New Jersey for prices ranging from $23.50 to $249 per month, with full bandwidth usage charges of $0.04/minute from 7 a.m. to 7 p.m. and $0.02/minute from 7 p.m. to 7 a.m. Over the ensuing four months, the Ratepayer Advocate and Bell attempted to negotiate a settlement to set mutually acceptable rates, but Bell did not propose an ISDN pricing structure which the Ratepayer Advocate could support. "

"Fatally Flawed" New Research —Another Deloitte & Touche Study

The advocate also discussed a new survey prepared for Bell Atlantic by Deloitte & Touche, stating that it was "fatally flawed". The survey attempted to "demonstrate the importance of telecommunications to business in terms of their operations, efficiency and competitiveness and how their usage of advanced technologies has dramatically increased." (90)

"Deloitte & Touche Consulting Group conducted a survey of 45 business in the State of New Jersey. The survey indicated that 97% of the businesses surveyed believe that telecommunications is critical to their business' ability to compete. The survey also showed that the businesses' usage of telecommunications increased by 80% over the last three years. Among all the businesses surveyed, 75% used ISDN, 60% used frame relay, 41% had dedicated lines, and 30% used SONET rings. The survey of small business showed that 100% used ISDN, 75%, used frame relay service, 41% had dedicated lines, and 30% used SONET rings." (91)

Reviewing the findings and methodology clearly shows just how flawed this self-serving study is. First, probably only 2-5% of business users use ISDN services today, not 75%-100%. Worse, Bell Atlantic created the list to be surveyed, knowing full well these were heavy users of new technologies. According to the Advocate: (92)

"The study presented to the Board cannot be relied upon because it is fatally flawed. The study is of only 45 businesses in the State, which is not a representative sample of the businesses in the this State. Furthermore, the 45 business selected by Deloitte & Touche were drawn from a list supplied by BA-NJ, which was comprised of BA-NJ customers."

Advocate Solutions — A slap on the wrist would have been nice.

While the Advocate has tried to help subscribers, a recent agreement between the phone company and the regulators pertaining to Opportunity New Jersey clearly demonstrates just how broken the regulatory system is.

As just outlined, the Advocate found that Bell Atlantic had not delivered on the Opportunity New Jersey Plan — there was no interactive services nor any massive fiber-optic deployment. More to the point, almost $1 billion dollars of excess dividend profits was accrued by the Bell company from 1992-1995.

Yet the agreement made between the Bell company and the state clearly shows that the regulators are either unwilling or unable to step up to the plate. Here's the details.

A press release from the New Jersey Advocate titled "New Jersey Consumer to See $176 Million in Benefits from Bell Atlantic Agreement with Ratepayer Advocate and BPU" was released on April 21, 1997. (93) And though the rhetoric says that schools will be wired and low income residents can receive discounted rates for phone service...

> "As a result of the modification of ONJ, Bell Atlantic will accelerate its schedule to provide New Jersey's 3,557 public and not-for-profit schools and public libraries with broadband service by the end of 2001, offer up to 225,000 low-income residents a discounted rate for phone service, accelerate its schedule to provide Urban Enterprise Zones with access to high-speed telecommunications services, and create up to 800 new jobs in New Jersey by the end of 1997."

...the details reveal that the rewards are mostly handwaving. There are virtually no quarantees of any monies returning to subscribers. The release states: (94)

- "establish a "Lifeline" fund for eligible low-income New Jersey residents, which will provide a **credit of up to** $7.00 per month/customer, with an estimated total value of $18 million";
- "forego seeking rate increases through 1999 that **could have totaled** $28 million; and",
- "use **best faith efforts to** achieve a net job gain of 800 full-time employees in New Jersey by the end of 1997."

What's wrong with this picture? All of the savings and new service promises are based on 'conditional' phrases: "use its best efforts to get jobs", "offer a credit up to", and forgo rate increases that "could have totaled $28 million". There is not one concrete dollar. From a legal standpoint, if the company spends only $2 dollars it qualifies as an "up to" amount.

Meanwhile, customers are paying hard money, by having to pay excessive prices, and therefore Bell profits, while all that's been agreed upon is soft money — there is no cash, no refunds, and even no legal promises.

More to the point, in 1997, New Jersey Bell still charged for Touchtone Service, and its Toll call prices were still some of the highest in the country. Also, the company's returns were 100% higher than a utility should be earning.

And then there's the amount of excess — almost $1 billion dollars of excess profits. This means that customers paid over $300+ million a year in excess dividends, and yet this agreement calls for nothing more than a 'value of $176 million in benefits" with no payback for over $1 billion dollars and no reductions of $300 million annually!.

To put this into perspective: New Jersey had approximately 5.4 million phonelines at the end of 1995, so the overcharging comes to approximately $175 per line (counting interest) for just those three years.

The author's position is that the Bell company should have been re-regulated, all of the monies accrued that were not spent on the fiber-optic service provision should have been returned, penalties should have been imposed, including interest, and prices should have been slashed to the appropriate level of a company who's regulated rate-of-return should be 11%; i.e., a utility rate , not the current 21%+.

In this case we fault, not the advocate, though they may have been able to get more concessions from the Bells, but the the New Jersey Board of Regulatory Commissioners for not adequately protecting the public interests.

Oh-Oh, Another Billion Owed? What About Massive Network Write-offs?

The advocate found that Bell Atlantic-NJ dividends were excessive and that the return on equity had doubled, but there was another billion dollars of extra profits that they didn't include. It was accrued from a massive network write-off, based on a change in accounting, a change that was implemented because of Opportunity New Jersey.

In Chapter 18 we detail "depreciation", a business accounting term that describes how a company writes-off its construction expenses, and we explain that by accelerating the write-offs the Bell companies were garnering billions in basically free cash. This cash was supposed to be used specifically to build the fiber-optic highway, but virtually nothing was ever built.

More to the point of our story, in examining the 1994 Bell Atlantic-New Jersey Annual Report, we find that with the implementation of Opportunity New Jersey, the telephone company changed its accounting principles and took additional write-offs, adding over $1 billion in free money. This accounting's obscure name is "FAS 71", for Financial Accounting Standard 71. (95)

EXHIBIT 15

Bell Atlantic New Jersey, Write Bonanza, 1994

(in the millions)

Increase in Plant and equipment depreciation reserve	$ 946
Other regulatory assets and liability elimination	$ 67
Total	$1,013

Source: New Jersey -Bell Atlantic Annual Report 1994

This billion dollars was applied to income tax and so the company showed the charges, as a savings of $423 million in taxes and a charge of $589.7 million in extra cash. (96)

"In connection with the decision to discontinue regulatory accounting principles under Statement No. 71, the Company recorded a noncash, after-tax extraordinary charge of $589.7 million, which is net of an income tax benefit of $423.2 million."

There were also a host of other savings not mentioned by the advocate, from a $7 million "extinguishment of debt", and a $67 million dollar "Regulatory Asset and Liability elimination", to a $36 million dollar annual increase in depreciation expenses.

And make no doubt about it. These savings were accrued because of Opportunity New Jersey. (97)

> "The Company's determination that it was no longer eligible for continued application of the accounting required by Statement No. 71. It was based on the belief that the convergence of competition, technological change (including the Company's technology deployment plans), actual and potential regulatory, legislative and judicial actions, and other factors are creating fully open and competitive markets."

When we consider that Bell Atlantic never built the highway, nor was there competition in 1994, can these accounting changes be justified, or are these additional monies that should be returned to subscribers? We will return to this question in later sections.

Footnotes:

76 In the Matter of the Board's Inquiry into Bell Atlantic New Jersey's Progress and Compliance with Opportunity New Jersey, its Network Modernization Program State of New Jersey Board of Public Utilities, Docket No TX96100707, Division of the Ratepayer Advocate, 3/21/97

77 New Jersey Telecommunications Infrastructure Study, Deloitte & Touche, 1991

78 All the Right Connections. — New Jersey Bell and the Wiring of a Regulatory Bonanza, Rick Linsk, The New Jersey Reporter, 6/24/92

79 Ibid.

80 Ibid.

81 Ibid.

82 In the Matter of the Board's Inquiry into Bell Atlantic New Jersey's Progress and Compliance with Opportunity New Jersey, its Network Modernization Program. State of New Jersey Board of Public Utilities, Docket No TX96100707, Div. of the Ratepayer Advocate 3/21/97

83 Ibid.

84 Ibid.

85 Ibid.

86 In the Matter of the Board's Review of the Amended and Restated Agreement and Plan of Merger Dated as of April 21,1996: by and between NYNEX Corporation and Bell Atlantic Corporation STATE OF NEW JERSEY BOARD OF PUBLIC UTILITIES DOCKET NO. TM96070504 :

87 Report from the New Jersey Division of The Ratepayer Advocate, 10-95 to 11-96. NOTE: "SONET Rings" and "Frame Relay" are advanced digital business services.

88 Ibid.

89 Ibid.

90 Ibid.

91 Ibid.

92 see footnote 82

93 New Jersey Consumer to See $176 million in Benefits from Bell Atlantic Agreement with Ratepayer Advocate and BPU New Jersey Advocate press release, 4/21/97

94 Ibid.

95 Bell Atlantic-New Jersey 1994 Annual Report. Note that New Jersey Bell is also a public company and therefore has its own filing requirements.

96 Ibid.

97 Ibid